

and fungus that typically spread as a result of multiple use by multiple users of a foot bath or bowl.

## REJECTION UNDER 102B

In item 3, page 2 of the Office Action, the Office rejected claim 1 under 35 U.S.C. Section 102b in view of:

1. Evans (Des. 258,696) or
2. Sudduth (Des. 328,160).

Applicants respectfully disagree.

In rejecting the claims, the Patent Office acted contrary to the guidance provided by the Federal Circuit, as to how to evaluate novelty with respect to the prior art.

### The Legal Standard for Novelty:

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either expressly or inherently. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574, 224 USPQ 409, 411 (Fed. Cir. 1984). Each and every element of the claimed invention must be disclosed in a single prior art reference in a manner sufficient to enable one skilled in the art to reduce the invention to practice, thus placing the invention in possession of the public. *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851, 105 S. Ct. 172 (1984); *Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576-7 (Fed. Cir. 1991), *clarified, on recons.*, 1991 U.S.App. LEXIS 33,486 (Fed. Cir. 1991). The absence of even a single element from a prior art reference negates anticipation. *Atlas Powder Co. v. E. I. Du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

Applicants Have Met the Legal Standard for Novelty:

Evans teaches an ear cover to protect ears from water.

Sudduth teaches a nurse's headwear.

None of these references alone teach a liner for a footbath or handbath as claimed. Accordingly, Applicants have met the legal standard for novelty, because the single reference of Evans, does not *identically* disclose the claimed disposable liner. Further, the single reference of Sudduth does not identically disclose the claimed disposable liner. Accordingly, neither reference, expressly anticipates the presently claimed invention.

In item 4, page 2 of the Office Action, the Office rejected claim 1 under Section 102b based on Guiste (US Patent No. 6,085,367). In item 8, page 4 of the Office Action, the Office rejected the claims under 102b based on Bleicher (US Patent No. 5,465,436).

Applicants respectfully disagree.

Guiste teaches a bathub liner in order to prevent a bather from slipping, falling and consequently injuring himself (column 1, lines 12-13).

Guiste does not teach a footbath or handbath liner to protect against disease from multiple users.

Accordingly, Applicants have met the legal standard for novelty, because the single reference of Guiste, does not *identically* disclose the claimed disposable liner.

In item 5, page 2 of the Office Action, the Office rejected claim 1 under Section 102b based on Bleicher (US Patent No. 5,465,436).

Applicants respectfully disagree.

Bleicher teaches a hydrotherapy tank liner for patients to be seated in the tank having a drain hole for ease of releasing water in the tank (column 2, lines 14-26; column 3, lines 5-9).

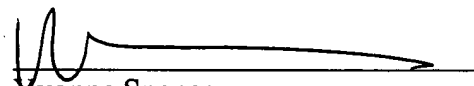
Bleicher does not teach a liner for a handbath or footbath. In configuration footbaths and handbaths are smaller than a tank that holds a person (see Figures 1, 2, and 4). Accordingly, Applicants have met the legal standard for novelty, because the single reference of Bleicher, does not *identically* disclose the claimed disposable liner.

#### CONCLUSION

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone her at the number provided below.

No fee, other than the fee for a three-month extension of time and filing fee, is deemed necessary in connection with the filing of this Communication.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Yvonne Spence', written over a horizontal line.

Yvonne Spence  
Karin Maihart  
Applicants  
11931 Montana Avenue  
Los Angeles, California 90049

Karin Maihart and Yvonne Spence  
U.S. Serial No. 10/080,068  
Filing Date: February 20, 2002  
Page: 6

Certificate under 37 C.F.R. §1.8: I hereby certify that this paper and the attachments herewith are being deposited by facsimile with the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 6, 2004.

  
Yvonne Spence